IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.6 OF 2000

Mukesh Mohanji Mehata,
At present detained in
Yerwada Central Prison,
Pune. .. Appellant
(Orig. Accused)

V/s

The State of Maharashtra. ...Respondent.

Mrs. Revati Mohite-Dere for the appellant.
Mrs. P.H. Kantharia, A.P.P. for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 22ND SEPTEMBER, 2004.

ORAL JUDGMENT (**PER ANOOP V. MOHTA, J.**)

. This is an appeal against the order of conviction, passed by the Sessions Judge, Pune, in Sessions Case No. 471/1998, by which appellant-accused has been convicted under section 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs 5000/-, and in default to suffer further rigorous imprisonment for one year, based on circumstantial circumstances.

2. On 17/9/1998, as deposed by P.W.8, Karnulkar, the deceased Malti who was a student of the Sai typing

institute, came running at 6.30 p.m. and closed the door from inside. She was injured and frightened and trying to hide as furious accused was armed with blood stained knife chasing her and hurling abuses. This was witnessed her class-mets and institute proprietor Kumar Karnulkar, P.W. 8 and his family. Mr. Karnulkar found Malti in injured and unconscious condition. They also saw accused through the window, who come into the compound and was armed with blood stained knife and hurling abuses. Accused also uttered as " I am Rajasthani, I have to go to police". Before leaving the institute the accused dropped the chit through the window of class. The accused also uttering loudly that he is going to police. One Mr. Dandwate, P.W. 5 was called through Sagar Deshpande (P.W.9) by Mr. Karnulkar (P.W. 8). After his arrival, P.W. 8 narrated the incident to him and both went to the house of Sanjay Mache (P.W. 4) and informed the occurrence. Sanjay Mache and his wife rushed to Sai Institute and found Malti in injured condition. Deceased was shifted to Krishana Hospital on autorickahsw and later on to Sasoon Hospital. Deceased Succumbed to the injury. The spot panchanama was drawn Exh.20, by P.S.I. Gawade.The chit Exh.35 was seized under panchanama Exh.24. Sanjay Mache

P.W. 4 lodged complaint Exh.18. The accused was arrested, so also his clothes having blood stained was seized. The weapon was also seized Exh.20. The inquest panchanama Exh.12 was also drawn. The clothes of the deceased were also seized under panchanama Exh.28. The accused was also sent for medical check up. The autopsy on the dead body was conducted by Dr. Nanadkumar who issued post-mortem notes Exh.33. He opined the cause of death as shock due to the stab injury. On 18/9/1998, through panchanama Exh.14, soil mixed with blood were also seized. The statements of the witnesses were also recorded. The writing specimens of the accused as per recitals in chit Exh.35 were also obtained under panchanama Exh.24. The articles seized were sent to the Chemical Analyser for report. The handwriting specimens and chit were also sent to handwriting expert for examination. Mr. Khan (P.W. 14) opined that the disputed chit is in the handwriting of the accused. The opinion Exh.37 and other documents produced by the expert and proved also. After due investigation accused was charged. He denied the same and raised defence also.Accused has examined one witness.

3. The prosecution has examined in all 15

witnesses. There was no eye witness to the incident. The appellant has examined his brother, Dinesh, as defence witness, Exh.67. P.W.1 Suba Shamim (Exh.11), a panch to inquest panchanama. P.W.2- Vasant Vitthal Shingade (Exh.13), a panch to spot panchanama. P.W. 3- Subhash Krishna Yadav (Exh.15), a panch to arrest and seizure panchanama. P.W. 4- Sanjay Sahebrao Mache (Exh.17), a complainant. P.W. 5- Rajendra Maruti Dhamale (Exh.19) a panch to the seizure pancahanama of knife. P.W. 6- Ashok Mahadeo Kundale (Exh.31) a panch to the seizure of disputed chit. P.W. 7- Baban Dagadu More (Exh.23), a panch to the specimen handwriting panchanama. P.W. 8-Kumar Baburao Karnulkar (Exh.25), Proprietor of Sai Typing Institute. P.W.9 Sagar Mohan Deshpande (Exh.26) a student of typing institute. P.W. 10- Kishor Maruti Pawar, (Exh. 27), a panch to the seizure of cloth of deceased. P.W. 11- Prabhakar Sakharam Dandwate (Exh.29), witness and panch to seizure panchanama. P.W. 12- P.S.I. Sarjerao Tukaram Gawade,(Exh.30), was station house officer. P.w. 13 Dr. Nandkumar, (Exh.32) who conducted the post-mortem. P.W. 14- Mr. S..H. Khan (Exh.34) an handwriting expert. P.W. 15- Police Inspector Vishwasrao Chougule, who was an investigating Officer. The learned Sessions Judge,

based on the above testimony and material, passed the impugned Judgment of conviction.

4. Heard the learned Advocate appearing for the appellant and A.P.P. for the State. After considering the submissions, as well as, grounds raised in the memo of appeal filed by the accused and after considering the supporting argument by learned A.P.P., apart from re-appreciation and re-weighing of the testimony of above witnesses, we are of the view that the impugned judgment based on the supporting reasoning need no interference. We are confirming the said reasoning and the order of conviction and sentence. We are dismissing this appeal also on the following reasons.

5. There is an ample evidence on the record to support the prosecution case, that Malti’s death was homicidal. Malti Jagtap,the deceased, succumbed to the stab injuries. P.W. 13, Dr. Nandkumar, categorically testified the various injuries including result of such injuries. He opined that the injuries were ante-mortem and the cause of death was shock due to stab injuries. P.W.1, has also proved inquest panchanama Exh.13. P.W. 8 Karnulkar, P.W. 9 Sagar, P.W. 4 Sanjay, P.W.11

Prabhakar have also testified the injured condition ofthe deceased, Malti. There was no substantial defence raised, in so far as the death of the deceased Malti is concerned.

6. The appellant's Counsel submitted that the conviction based on the circumstantial evidence are not sufficient to link the chain of the events which pin-points the involvement of the accused in assaulting or stabbing the deceased Malti at relevant time, as there was no eye witness. The conviction based on the circumstantial evidence in the present case therefore, was not proper.

7. The Apex Court has laid down the basic principle of " cicumstantial evidence." in State of U.P. Vs.Dr. Ravindra Prakash Mittal , A.I.R. 1992, 2045, which reads as under:-

> "(1) the circumstances from which the convulsion is drawn should be fully proved.
>
> (2) The circumstances should be convulsive in nature,
>
> (3) All the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;

(4) The circumstances should, be a moral certainty, exclude the possibility of guilt of any person other than the accused."

8. In the present case, the appellant-accused was in love with deceased Malti and wanted to marry her. However, this was one sided affair. To show his love, the appellant, as recorded, inflicted himself prior to occurrence and drawn almond picture from the own blood, Exh.35. The deceased Malti not responded to the appellant-accused at time. This resulted into his frustration. There is no direct evidence, to show appellant's love or frustration because of her refusal. The basic document, which was relied on is Exh.35, It was proved to be written by the appellant. The prosecution had led evidence to support the said written note and examinined the expert by taking specimen writing of or the accused.

9. The finding is given by the learned Sessions Judge that P.Ws. 8 and 9 saw the appellant-accused while dropping this chit and P.W.8 therefore, produced it before the police. The said chit was found from the place of the occurrence in question. This is not the case of recovery or discovery of any articles at the

instance of the accused. Therefore, the principle of Section 27 of Evidence Act may not be extended or applicable to such recovery. P.W. 8 and P.W.9 have no enmity with the accused-appellant are independent witness.

10. We have gone through the evidence of P.Ws. 8 and 9. We found that discrepancies are not sufficient enough to destroy the prosecution case as sought to be agitated by the appellant-accused. The incident took place at about 6.30 p.m. on 17.9.1998. There was sufficient light to see the appellant-accused. For want of identification parade in such circumstances nowhere support the case of total acquittal.There was no defence that the witnesses were biased.

11. The authenticity of the handwriting is relevant, to prove the case of the prosecution that the accused wrote Exh.35 or note in question. In support P.W. 14 has been examined in this matter. P.W. 7 Baban More, has been examined as panch to Exh.24. He identified the chit Exh.35. He further deposed that the accused had been handed over paper sheets and was asked to scribe as per the contents of the chit in question. Accordingly,

the panchanma was drawn in his presence. In his cross-examination defence lawyer could not extract anything in their favour. This witness also remained intact. This also corroborate the evidence of the investigating officer, P.W. 5. That the specimen hand-writing and chit were sent to expert and which were duly proved (Eh.49). P.W. 14, Mr. Salim, compared the hand-writing Exh.35, with the supplied specimen hand-writing of the accused vide Exh.36/1 to 36/6. He examined these documents by adopting various methods and conditions. He proved and opined that the chit Exh.35 was in the hand-writing of the appellant-accused. He placed photographic enlargement vide Exh38/1 to 38/9 with negatives at Exh.39 on the record. The learned Judge has considered in detail the exact nature ofthe writing of the appellant in para 20 and held the evidence of P.W. 14 to be convincing and satisfactory. Therefore, the learned Judge has rightly held that the chit must have been written by the accused-appellant and nobody else.

12. The reliance on A.I.R. 1980 S.C. 531 in Murarilal Vs. State M.P. supports the prosecution case. The extract of the Apex Court’s decision is as

under;

> "An expert is no accomplice. There is no justification for condemning his opinion evidence to the same class of evidence as that of an accomplice and insist upon corroboration.
>
> An expert deposes and not decides. His duty is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent Judgment by the application of these criteria to the facts proved in evidence"

13. The principles as laid down and relied by the defence, in respect of the expert opinion and its affect ned not mentioned here again. The finding given by the learned Judge that the chit Exh.35 has been written by the accused and also dropped where the deceased found in injured condition is correct. This chain of events proved the motive of accused and his intention to kill Malti out of frustration because of failure in love.

14. The learned Judge has already observed that there was sufficient evidence to show that the victim Malti and accused were last seen together.

15. P.W. 3, Gawade, P.S.I. has also supported the

prosecution case that the accused surrendered his knife and had informed the reason to attack Malti. The seizure of the knife under panchanama Exh.20, has been duly proved by the panch witness Exh.5, Rajendra. Same linked to the entry in Station diary and related timing therein. The Apex Court in A.I.R. 1992 S.C. 604, State of Hariyana and others Vs. Bhajanlal & others, held as under;

> "Commencement of investigation is cognisable offence by a police officer is subject to conditions, firstly the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1) and secondly the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering in an investigation even before he starts an investigation into facts and circumstances of the case as contemplated under clause (b) of proviso to Section 157."

16. The learned Judge rightly observed that the accused was moving along with the police officer and/or was in their company till formal arrest. The accused cannot take benefit to suggest that the accused was never surrendered the knife before P.W. 12, P.S.I. Gawade and nor confessed. The seizure memo Exh.20 shows otherwise. Even though the some doubts were raised in so far as entry No.44 of the Station Diary, but that

itself cannot be the reason to disbelieve the prosecution case.

17. Mere irregularity, if any, in investigation, which are not fatal in nature, cannot affect the prosecution case. The defence must show prejudice or unjustice because of such failure or lacuna in the investigation.

18. The blood group of deceased was "B", (Exh.52), as per Chemical Analyser report. The blood group of the accused is "O", as recorded by the learned Judge in para 34. The incriminating knife, clothes of the accused were having blood of "B" gropup of the deceased. There was no satisfactory explanation on behalf of the defence, about the existence of the blood group "B" on these articles. The recovery of these articles has been also duly proved by the independent panch witnesses. Therefore, the blood group of the deceased on the knife and clothes of the accused also connect the link and involvement of the accused in crime. This also proved that the accused and nobody else was the author of the murder of deceased.

19. P.W. 15, P.I.,Chougule, Investigating Officer has also supported and corroborated the prosecution case, read with the evidence of P.W.8, Karnulkar, P.W. 11, Prabhakar Dandwate,P.W. Vasant Shingade, P.W.3 Subhash Yadav, P.W. 12 Gawade and P.W. 15, Chougule, as rightly observed by the learned Judge.

20. P.W. 4, Sanjay Mache, maternal uncle of the victim also supported the fact that the victim was attending the 6.30 p.m class of typing institute regularly. She left around 6.20 p.m. on that day.

21. The defence evidence as recorded in para 35 of the judgment nowhere supported the case in any way. Merely because the accused was married that itself cannot be the reason to disbelieve the prosecution case. There was no material placed on the record by the defence, that accused is illiterate, except bare words.

22. After considering the documents, as well as, evidence placed on the record, we are of the view that the appellant intentionally and knowingly assaulted Malti and committed this crime. Whatever may be the circumstances, there is no mitigating circumstances to

reduce the punishment, as imposed by the Sessions Court. We are, therefore, maintaining the impugned judgment and order. There is no merit in the appeal.

23. The appeal is therefore, dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]